Sri Sekamat Enterprise Sdn Bhd v Kerajaan Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO 24C-2–03 OF 2014
SEE MEE CHUN J
25 AUGUST 2015

Civil Law Act — Assignment — Statutory assignment — Assignment of debts — Prerequisite conditions for valid assignment — Whether debt established — Whether assignment in writing — Whether express notice of assignment given — Whether consent of debtor required — Whether intention to create absolute assignment established — Whether debtor may be liable to assignor despite having settled debt to assignee — Civil Law Act 1956 s 4(3)

D1 and D2 had entered into a privatisation agreement wherein D2 was required to develop a project on a piece of land. In consideration D1 was to ensure the transfer of another piece of land to D2. D2 appointed the plaintiff as the contractor for the project. The plaintiff submitted progress claims to D2 and they were valued and certified by the QS and architect whereupon interim valuation No 1–9 were issued ('DS3'). D2 failed to pay and in the meanwhile D1 terminated the privatisation agreement. The plaintiff was subsequently appointed by D1 to complete the project. The work was completed and the plaintiff was duly paid. As it had not been paid by D2 for the works, the plaintiff sought payment from D1 as D2 claimed that it had not received any payment from D1 for it to pay the plaintiff. D1 informed the plaintiff that any payment under the privatisation agreement would be paid only to D2. However, by letter dated 3 April 2008 ('DS6') D2 had consented and authorised D1 to pay any amount due and owing by D1 to D2 directly to the plaintiff. This letter formed the basis of the plaintiff's claim against D1 in this suit. Nowhere in its affidavits did D1 dispute or question the receipt or knowledge of the letter. The only objection raised by D1 towards the validity of the letter being an assignment was that D2 had not obtained its consent. D1 contended, inter alia, that: (a) the consideration in the privatisation agreement was not monetary but in the form of a land swap; (b) it would be unjust if it had to pay the plaintiff for the project as it had already paid D2; and (c) the reference to a ceiling amount meant the assignment was not absolute.

Held:

(1) The four requirements to render the letter dated 3 April 2008 ('DS6') a statutory assignment were that it must be in respect of a debt, given in writing by the assignor, notice in writing to the debtor and absolute (see para 14).

(2) As for the requirement of there being a debt, this related to the interim valuation where there was no challenge to their validity by D2. As for the requirement that the assignment has to in writing by the assignor, there was no dispute that it was issued by a properly authorised officer of D2. As for the requirement for an express notice to be given to the debtor ie D1, D1 had never disputed having received the letter. Having received it, D1 had never disputed or questioned the contents thereof. The requirement of an express notice is not the same as consent from D1 and therefore consent was not relevant. As for the requirement that the assignment be absolute, the words in para 3 of the letter irresistibly showed the intention to create an absolute assignment (see paras 16–19).

(3) There being a ceiling amount did not make the assignment not absolute; it was the fact of the amount being provisional and subject to variations. There was no provisional amount or variations but only the certified amount. Therefore the letter of 3 April 2008 was a statutory assignment within the meaning of s 4(3) of the Civil Law Act 1956. By virtue of this D2 had authorised D1 that any amount due and owing by D1 to D2 was to be paid to the plaintiff (see paras 21–22).

(4) The commencement of arbitration between D1 and D2 did not affect the validity of the assignment as the arbitration was to determine what was payable by D1 to D2 arising from the termination of the privatisation agreement with the ensuing arbitrator's award rendering D1 a debtor to D2. The assignment operates from the date of the notice; *Bank Bumiputra Malaysia Bhd & Anor v Lorrain Esme Osman & Ors* [1987] 1 MLJ 502 referred (see para 22).

(5) D1 knowing of the assignment and nevertheless paying D2, could still be liable to the plaintiff. D1 was liable to pay the plaintiff the certified amount on the basis of there being an assignment from D2 to D1 that any amount due and owing by D1 to D2 was to be paid to the plaintiff; *Malayawata Steel Berhad v Government of Malaysia & Anor* [1980] 2 MLJ 103 referred (see paras 24–25).

(6) No liability was attached to D2 as the plaintiff had in the course of proceedings indicated its cause of action against D2 was premised on a statutory assignment. There was therefore no basis to the claim against D2 (see para 25).

[Bahasa Malaysia summary

D1 and D2 telah memasuki perjanjian penswastaan di mana D2 dikehendaki untuk membangunkan sebuah projek atas sebidang tanah. Dalam balasan D1 untuk memastikan pemindahan satu lagi bidang tanah kepada D2. D2 melantik plaintif sebagai kontraktor untuk projek itu. Plaintif menghantar tuntutan kemajuan kepada D2 dan mereka telah dinilai dan disahkan oleh juruukur bahan dan akitek di mana penilaian interim No 1–9 dikeluarkan

('DS3'). D2 gagal untuk membayar dan sementara itu D1 membatalkan perjanjian penswastaan. Plaintif setelah itu dilantik oleh D1 untuk menyiapkan projek. Kerja telah disiapkan dan plaintif telah dibayar dengan sewajarnya. Oleh kerana ia tidak dibayar oleh D2 untuk kerja-kerja, plaintif meminta bayaran daripada D1 kerana D2 mendakwa ia tidak menerima apa-apa bayaran daripada D1 untuk membayar plaintif. D1 memaklumkan kepada plaintif bahawa apa-apa bayaran di bawah perjanjian penswastaan hanya akan dibayar kepada D2. Walau bagaimanapun, melalui surat bertarikh 3 April 2008 ('DS6') D2 telah membenarkan dan memberi kuasa kepada D1 untuk membayar apa-apa jumlah tertunggak dan terhutang oleh D1 kepada D2 secara terus kepada plaintif. Surat ini menjadi asas kepada tuntuan plaintif terhadap D1 dalam guaman ini. Tiada di mana-mana di dalam afidavit telah D1 mempertikaikan atau mempersoalkan pengetahuan penerimaan surat. Satu-satunya bantahan yang dibangkitkan oleh D1 terhadap kesahihan surat menjadi penyerahhakan adalah bahawa D2 tidak mendapat kebenaran. D1 menghujahkan, antara lain, bahawa: (a) balasan di dalam perjanjian penswastaan bukanlah dalam bentuk wang tetapi dalam bentuk pertukaran tanah; (b) adalah tidak adil jika ia perlu membayar plaintif untuk projek kerana ia telah membayar D2; dan (c) rujukan kepada jumlah maksimum bermakna penyerahhakan tidak muktamad.

Diputuskan:

(1) Empat keperluan untuk memberi surat bertarikh 3 April 2008 (DS6) penyerahhakan statutori adalah bahawa ia mestilah berkaitan dengan hutang, yang diberikan secara bertulis oleh pemberi hak, notis bertulis kepada penghutang dan muktamad (lihat perenggan 14).

(2) Untuk keperluan perlunya ada hutang, ini berkaitan dengan penilaian interim yang mana tiada cabaran terhadap kesahihannya oleh D2. Untuk keperluan bahawa penyerahhakan perlulah dalam bertulis oleh pemberi hak, tiada pertikaian bahawa ia dikeluarkan oleh seorang pegawai D2 yang mempunyai kuasa sewajarnya. Untuk keperluan untuk notis segera untuk diberikan kepada penghutang iaitu D1, D1 tidak pernah mempertikaikan telah menerima surat itu. Setelah menerimanya, D1 tidak pernah mempertikaikan atau mempersoalkan kandungan di dalamnya. Keperluan satu notis segera tidak sama seperti kebenaran daripada D1 dan oleh itu kebenaran adalah tidak relevan. Untuk keperluan bahawa penyerahhakan hendaklah muktamad, perkataan di perenggan 3 surat menunjukkan dengan jelas niat untuk membentuk satu penyerahhakan muktamad (lihat perenggan 16–19).

(3) Terdapatnya jumlah maksimum tidak membuat penyerahhakan itu tidak mutlak; ia adalah hakikat jumlah yang adalah sementara dan tertakluk kepada perubahan. Tidak ada jumlah peruntukan atau perubahan tetapi hanya amaun yang disahkan. Oleh itu surat 3 April 2008 adalah

peyerahhakan statutori dalam erti s 4(3) Akta Undang-Undang Sivil 1956. Dengan kuasa ini D2 telah memberikan kuasa kepada D1 bahawa apa-apa jumlah tertunggak dan terhutang oleh D1 kepada D2 hendaklah dibayar kepada plaintif (lihat perenggan 21–22).

(4) Permulaan kuatkuasa timbang tara di antara D1 dan D2 tidak memberi kesan atas kesahihan penyerahhakan kerana timbang tara adalah untuk menentukan apa yang perlu dibayar oleh D1 kepada D2 berbangkit daripada penamatan perjanjian penswastaan dengan award penimbang tara yang berikutnya yang menjadikan D1 penghutang kepada D2. Penyerahhakan beroperasi dari tarikh notis; *Bank Bumiputra Malaysia Bhd & Anor v Lorrain Esme Osman & Ors* [1987] 1 MLJ 502 dirujuk (lihat perenggan 22).

(5) D1 mengetahui penyerahhakan namun membayar D2, masih boleh bertanggungan kepada plaintif. D1 bertanggungan untuk membayar plaintif amaun yang disahkan atas asas terdapat penyerahhakan daripada D2 kepada D1 bahawa apa-apa jumlah tertunggak dan terhutang oleh D1 kepada D2 hendaklah dibayar kepada plaintif; *Malayawata Steel Berhad v Government of Malaysia & Anor* [1980] 2 MLJ 103 dirujuk (lihat perenggan 24–25).

(6) Tiada liabiliti dikaitkan kepada D2 kerana plaintif telah dalam perjalanan prosiding menunjukkan kausa tindakan terhadap D2 dibuat berdasarkan penyerahhakan statutori. Oleh itu tiada asas untuk menuntut terhadap D2 (lihat perenggan 25).]

Notes

For cases on assignment in general, see 1(3) *Mallal's Digest* (5th Ed, 2015) paras 4355–4378.

Cases referred to

Bank Bumiputra Malaysia Bhd & Anor v Lorrain Esme Osman & Ors [1987] 1 MLJ 502 (refd)

Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd [2015] 1 MLJ 284; [2014] 5 CLJ 533, CA (refd)

Malayawata Steel Berhad v Government of Malaysia & Anor [1980] 2 MLJ 103, PC (refd)

Wong Kim Wah (trading as 'Syarikat Binaraya') v The Government of the State of Pahang & Anor [2004] 7 MLJ 335; [2004] 7 CLJ 61, HC (refd)

Legislation referred to

Civil Law Act 1956 s 4(3)

M Ganesh (Hakem Arabi & Assoc) for the plaintiff.
Noerazlim bt Saidil (Senior Federal Counsel, Attorney General's Chambers).

See Mee Chun J:

[1] Enclosure (1) is the plaintiff's application for, inter alia, a declaration the nine interim valuations certified and approved by a quantity surveyor named Kuh Cho Sen ('QS') and architects named Hj Mohd Razin Mahmood and Mohd Azman Md Yusof ('architect') are valid and conclusive evidence and that arising from the nine interim valuations, the defendants pay the amount of RM4,692,368.81 ('certified amount') to the plaintiff.

BACKGROUND FACTS

[2] By way of background, D1 and D2 had entered into a privatisation agreement dated 18 September 2002 ('privatisation agreement' – 'DS1'). D2 was required to develop the project (defined as a new secondary school with 36 classrooms to be called the Sekolah Menengah Taman Desa Rawang II which shall be designed, constructed and completed by it) on the project land for a contract sum of not less than RM12.6m. In consideration D1 was to ensure the transfer of an exchanged land to D2.

[3] By letter of award dated 10 October 2002 (LA – 'DS2'), D2 appointed the plaintiff as the contractor for the project for a contract sum of RM9.5m. The work was made up of 'Preliminaries, Main Building Works, External Works, M&E Works, Balance of Piling, Pile Caps and Column Stumps'. The plaintiff submitted progress claims to D2 and they were valued and certified by QS and architect whereupon interim valuation No 1–9 were issued ('DS3'). No payments were ever made by D2 and in the meanwhile D1 terminated the privatisation agreement on 13 April 2006.

[4] The plaintiff was subsequently appointed by D1 on to 12 July 2006 take over the work on the project for a contract sum of RM11.2m. The work was completed on 23 October 2007 and the plaintiff duly paid.

[5] As it had not been paid by D2 for work arising from LA, the plaintiff by letter dated 28 November 2007 wrote to D1 for payment as the privatisation agreement had been terminated and D2 had informed D1 it had not received any payment from D1 for it to pay the plaintiff. By letter dated 11 February 2008 D1 informed the plaintiff any payment under the privatisation agreement would be paid only to D2.

[6] By letter dated 3 April 2008 ('DS6') D2 is purported to have consented and authorised D1 to pay any amount due and owing by D1 to D2 directly to the plaintiff. The letter forms the basis of the plaintiff's claim against D1 and will be referred to for its full terms and effect.

[7] In the midst of an earlier Originating Summons 24NCC(ARB) 24–05 of 2013 dated 29 August 2013 filed against D1 to pay the amount certified in the nine interim valuation, the plaintiff was informed of an arbitration between D1 and D2 where the award of arbitrator dated 20 February 2013 was for D1 to pay D2 RM9.727m arising from termination of the privatisation agreement. The plaintiff was further informed its claim for the certified amount had been included in the arbitrator award. D2 has since confirmed it has been paid the amount of RM9.727m. D2 had filed an application to refer the arbitrator's award on a point of law where the plaintiff had applied to intervene. In that matter D1 in its submission took a contrary stand in stating the certified amount had not been considered by the arbitrator ('DS10'). Irrespective of this the plaintiff contends D1 is still liable to pay it. The earlier originating summons was withdrawn with liberty. Hence the present application.

THE PLAINTIFF'S POSITION

[8] The plaintiff's position is thus premised on the certified amount for which the plaintiff is entitled to be paid from any damages obtained by D2 from D1 and letter of assignment dated 3 April 2008.

D1'S POSITION

[9] The fact of the privatisation agreement and subsequent appointment of the plaintiff by D1 to complete the project were not disputed by D1. On the LA whereby D2 had appointed the plaintiff as its contractor for the project and thereby giving rise to the certified amount, D1 states it has no knowledge as the LA was between D2 and the plaintiff (encl 7 – para 7). On the purported assignment D2 had commenced arbitration against D1 when the letter of 3 April 2008 was issued wherein an issue in consideration was the claim for work on the project. With regard to the arbitrator's award it was in relation to the privatisation agreement between D1 and D2.

[10] D1 refutes the position taken by the plaintiff. It states the plaintiff is not entitled to any damages that D2 may or have obtained from D1 as the plaintiff was not a party to the arbitration, the arbitration arose from the privatisation agreement to which the plaintiff was not a party, all payments resulting from arbitrator's award has been paid by D1 to D2 and there is no outstanding payment due to the plaintiff by D1 arising from the plaintiff's appointment to complete the project (para 23). D1 reiterates it had no knowledge of the interim valuations.

[11] On the letter of assignment D1 states arbitration between D1 and D2 had already commenced, whatever amount pursuant to arbitrator's award had been paid by D1 and there was no indication from D2 during the proceedings

for D2 to pay D1 (para 24 encl 7), D2 had not obtained its consent, and the consideration in the privatisation agreement was not monetary but in the form of land swap ie exchanged land (paras 4 and 6–8 in encl 11).

[12] D1 concludes by stating it would be unjust if it had to pay the plaintiff for the project as it had already paid D2.

WHETHER LETTER DATED 3 APRIL 2008 AN ASSIGNMENT

[13] As much turns on whether the letter dated 3 April 2008 ('DS6') was an assignment, a substantial portion of it is reproduced below. The letter was from D2 to Ministry of Education Malaysia and copied to Ministry of Finance and the plaintiff. The subheading is 'Surat Memberi kuasa kepada Kementerian Pelajaran Malaysia untuk membuat Pembayaran terus kepada Sri Sekamat Enterprise Sdn Bhd selaku Kontraktor Utama' and reads as follows:

> Kami merujuk kepada perkara di atas dan surat pihak Kementerian Kewangan Malaysia kepada Sri Sekamat Enterprise Sdn Bhd ['Kontraktor Utama'] yang bertarikh 11hb Februari 2008.
>
> Setelah mempertimbangkan permohonan Kontraktor Utama, kami telahpun bersetuju untuk menyerah hak kami ['assign'] kepada Kontraktor Utama bagi keseluruhan 'proceeds' kami atau mana-mana bahagiannya yang kami berhak menuntut daripada pihak Kementerian setakat jumlah RM7,292,368.68 yang masih terhutang oleh pihak kami kepada Kontraktor Utama bagi kerja-kerja yang telah dilaksanakan di tapak tersebut. Kami melampirkan sesalinan surat menyerah hak ['assign'] kepada pihak Tuan untuk kemudahan rujukan pihak Tuan.
>
> Berikutan itu, kami dengan memberi kuasa sepenuhnya kepada pihak Kementerian Pelajaran Malaysia selaku Tuanpunya hartanah di atas untuk melepaskan keseluruhan atau mana-mana bahagian sepertimana yang dituntut oleh Kontraktor Utama terus kepada Kontraktor Utama setakat RM7,292,368.68 daripada jumlah yang kami berhak menuntut daripada Kementerian Pelajaran Malaysia bagi kerja-kerja yang telah dilaksanakan mengikut peratusan kerja yang telah disiapkan sepertimana yang dinilai oleh pihak Kementerian seolah pembayaran tersebut dibuat secara terus oleh pihak kami kepada Kontraktor tersebut.
>
> Kami dengan ini mengesahkan bahawa kami tidak akan membuat apa-apa tuntutan ataupun membawa apa-apa tindakan kepada mana-mana pihak berkenaan dengan kuasa dan kebenaran yang diberikan kepada pihak Kementerian untuk membuat bayaran tersebut terus kepada Kontraktor Utama tersebut.

[14] As to whether an assignment has been created, s 4(3) of the Civil Law Act 1956 provides as follows:

> Any absolute assignment, by writing, under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, shall be, and be deemed to have been, effectual in law ...

The four requirements to render the letter a statutory assignment are that it must be in respect of a debt, given in writing by the assignor, notice in writing to the debtor and absolute. In *Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd* [2015] 1 MLJ 284; [2014] 5 CLJ 533 it was stated at p 301(MLJ); p 552 (CLJ):

> Although there is no particular from that is required to be followed in establishing an assignment in writing, yet the language used in the writing that gives rise to an assignment must be absolute in that it will pass the entire interest of the assignor in the chose in action.

[15] At the outset it must be stated that nowhere in its affidavits did D1 dispute and/or questioned the receipt and/or knowledge of the letter. The only objection raised by D1 towards the validity of the letter being an assignment was that D2 had not obtained its consent. Issues about the assignment being attached to the letter and not filed in court and the assignment not absolute as there was a ceiling of up to RM7,292,368.68 were never raised.

[16] On requirement (1) of there being a debt, this relates to the interim valuation where there was no challenge to their validity by D2. As to there being no monetary consideration but only a land swap in the form of exchanged land, the letter dated 13 April 2006 ('SS4') from D1 to D2 shows otherwise. This letter issued pursuant to termination of privatisation agreement noted D2 had never submitted the land bond and the issue of transfer of land to D2 did not arise. It then went on as follows 'Oleh yang demikian, bayaran akan dibuat kepada pihak tuan untuk kerja-kerja yang telah dilaksanakan mengikut peratusan kerja yang telah disiapkan yang dinilai oleh pihak Kementerian ...'.

[17] On requirement (2) that the assignment has to in writing by the assignor, there is no dispute that it was issued by a properly authorised officer of D2.

[18] On requirement (3) for an express notice to be given to the debtor ie D1, as stated earlier, D1 had never disputed having received the letter addressed to the Ministry of Education which was copied to another Ministry, Ministry of Finance. Having received it, D1 had never disputed and/or questioned the contents thereof. The requirement of an express notice is not the same as consent from D1 and therefore consent is not relevant.

[19] On requirement (4) that the assignment be absolute, the words in para 3 of the letter 'kami dengan ini memberi kuasa sepenuhnya kepada Kementerian Pelajaran Malaysia ... untuk melepaskan keseluruhan atau mana-mana bahagian sepertimana yang dituntut oleh Kontraktor Utama terus kepada Kontraktor Utama' irrestibly shows the intention to create an absolute

assignment. This is further fortified by the words in para 5 'kami dengan ini mengesahkan bahawa kami tidak akan membuat apa-apa tuntutan ataupun membawa apa-apa tindakan kepada mana-mana pihak berkenaan dengan kuasa dan kebenaran yang diberikan kepada pihak Kementerian untuk membuat bayaran tersebut terus kepada Kontraktor Utama tersebut'.

[20] D1 had submitted the reference to a ceiling amount meant the assignment was not absolute and referred to *Wong Kim Wah (trading as 'Syarikat Binaraya') v The Government of the State of Pahang & Anor* [2004] 7 MLJ 335; [2004] 7 CLJ 61. Notwithstanding the fact of the letter not being absolute was never raised, this court will nevertheless consider this. At p 342 (MLJ); p 68 (CLJ) of *Wong Kim Wah* it was stated:

> The plaintiff's counsel in the course of the written submission has cited the following paragraph in the assignment of receivables to state that the assignment is absolute:
>
> > Now therefore, for and in consideration of the foregoing premises, Assignor hereby assigns in assignment, the right to receive directly from the Pahang Government all payments as and when they become due and payable by the Pahang Government to the Assignor under the provision of the Main Contract with reference to the aforesaid sub-contract works from time to time to the extent of M$7,939,313.25 (hereinafter called 'the Payment').
>
> In my view if this is the part of the provision that is to be relied to establish that the assignment is absolute, it is indeed incomplete.

It was premised on this D1 submitted a ceiling amount meant the assignment was not absolute. However if one turns to p 344 (MLJ); p 70 (CLJ) the judge had said with reference to that payment it was 'only provisional and subject to variations as provided for in the main contract, under the following terms and conditions to wit' and there was listed those terms and conditions.

[21] Hence there being a ceiling amount did not make the assignment not absolute, it was the fact of the amount being provisional and subject to variations. In our instant case there is no provisional amount or variations but only the certified amount.

[22] It was therefore this court's finding the letter of 3 April 2008 was a statutory assignment within the meaning of s 4(3) of the Act. By virtue of this D2 had authorised D1 that any amount due and owing by D1 to D2 is to be paid to the plaintiff. The commencement of arbitration between D1 and D2 did not affect the validity of the assignment as the arbitration was to determine what was payable by D1 to D2 arising from the termination of the privatisation agreement with the ensuing arbitrator's award rendering D1 a debtor to D2. *Bank Bumiputra Malaysia Bhd & Anor v Lorrain Esme Osman & Ors* [1987] 1 MLJ 502 states the assignment operates from the date of the notice.

[23] Although the arbitration was between D1 and D2 arising from the termination of privatisation agreement the arbitrator's award dated 20 February 2013 had included 'item (viii) construction works executed by Sri Sekamat Enterprise S/B for RM4,692,368.99' as costs and expenses spent by D2 for the construction work totaling RM7,990,164.99. This amount tallies with the plaintiff's claim and shows the nine interim valuations in question were included in the total cost of RM7,990,164.99. This can be seen in p 75 of 84 of 'DS1' to the plaintiff's additional affidavit dated 2 January 2015.

[24] D1 had contended it would be unjust if having paid RM7.727m to D2 as a result of arbitrator's award it now is liable to pay the plaintiff the certified amount. The Privy Council case of *Malayawata Steel Berhad v Government of Malaysia & Anor* [1980] 2 MLJ 103 is authority for the principle that 'if the debtor knows of the assignment and pays the debt nevertheless to the assignor he may be held liable to the assignee' (p 103). In that case the Privy Council held there had been an equitable assignment whereby as between Ng Keng Hooi (NHK, to whom the contract for construction of a Radio Centre was awarded) and MSB (appellant) progress payments due from PWD/JKR to NKH are to be made not to NKH but to MSB. At p 103 it was stated:

> This appeal arises in proceeding in which MSB contend that there was an equitable assignment of progress payments of which PWD was aware: that, ignoring the assignment, some progress payments were made to NKH which should have been made to MSB; and that as a result MSB are shot of $215,618 in payment for steel bars supplied, which sum would have been satisfied had PWD paid the progress payments to MSB instead of to NKH.

At p 109 judgment was ordered against the government for the sum of RM215,618. This case thus supports the proposition that D1 knowing of the assignment and nevertheless paid D2 can still be liable to the plaintiff.

CONCLUSION

[25] D1 was thus liable to pay the plaintiff the certified amount on the basis of there being an assignment from D2 to D1 that any amount due and owing by D1 to D2 is to be paid to the plaintiff. I add here no liability was attached to D2 as the plaintiff had in the course of proceedings indicated its cause of action against D2 was premised on a statutory assignment. There was therefore no basis to the claim against D2.

Order accordingly.

Reported by Kanesh Sundrum